

Before the
Federal Communication Commission
Washington, D.C. 20554

In the Matter Of High-Cost Universal)
Service, Federal-State Joint Board On) WC Docket No.
05-337
Universal Service Regarding An Interim)
Cap on High-Cost Universal Service) CC Docket No.
96-45
Support for Competitive Eligible)
Telecommunications Carriers)

Reply Comments Of
Totah Communications, Inc.
FairPoint Communications (formerly Chouteau Telephone
Company)
Pine Telephone Company, Inc.
Pine Cellular Phones, Inc.
Grand Telephone Company, Inc.

REPLY COMMENTS

Totah Communications, Inc., FairPoint Communications (formerly Chouteau Telephone Company), Pine Telephone Company, Inc., Grand Telephone Company, Inc., rural Incumbent Local Exchange Carriers (“ILECs”) in Oklahoma, and Pine Cellular Phones, Inc., a Commercial Mobile Radio Services (“CMRS”) provider in Oklahoma (collectively “Commentors”) hereby submit the following reply comments in support of the Joint Board’s recommendation to cap the support received by CETCs for an interim period.¹

I. CONTRARY TO ASSERTIONS OF VARIOUS CETCS, THE INTERIM CAP DOES MEET THE REQUIREMENTS OF THE ACT AND IS LAWFUL

The Commission should immediately implement the cap on CETC federal support. Unsupported claims that the recommended cap on federal CETC support is unlawful or at odds with the Act’s Universal Service goals and principles are spurious and wrong. Courts have recognized that the Commission’s “broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service.”² Such discretion may include caps,

¹ In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Recommended Decision, released May 1, 2007 in Dockets WC Docket No. 05-337 and CC Docket No. 96-45, paragraph 1.

² See, *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620-621 (5th Cir. 2001).

which result in the reduction of support received by a carrier.³ Competitive neutrality does not mean that all carriers/ETCs must receive the same level of support and/or that they must all be treated equally with respect to the distribution of USF support.⁴

The imposition of a cap on CETC support will (a) provide specific, sufficient, predictable and sustainable support to allow CETCs to continue to provide universal services at their current rate and service levels (which may or may not be quality services at rates that are just, reasonable and affordable), (b) provide access to those services and rates at levels that are comparable to services and rates in urban areas, and (c) provide access to advanced services.

II. THE INTERIM CAP IS COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL

The claim of opponents of a CETC support cap that they are being singled out and that a cap is solely applied to them is both mistaken and, as WTA notes in its comments, is “ridiculous”. Caps have historically been utilized by the Commission as a means of controlling fund growth. For example, to constrain the growth of the high cost fund, the Commission has previously

³ *Id.* at 620 (where the 5th Circuit Court held in *Alenco*, “So long as there is sufficient and competitively neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well.”)

⁴ *See, e.g., TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 80 (2nd Cir. 2002) (competitive neutrality “does not require precise parity of treatment”); *Qwest Communications International v. FCC*, 398 F.3d 1222, 1233 (10th Cir. 2005) (section 254 “does not impose a requirement of parity with respect to...the distribution of funds between and among carriers.”) *See also*, Comments of USTelecom at pp. 3-5 in the instant cause.

capped the Schools and Libraries program, the Rural Health Care program, ILEC High Cost Support and Interstate Access Support.

The fact is that ILEC support is and has been largely capped. The law is clear that competitive neutrality does not require the Commission to provide the same levels of support to both ILEC ETCs and CLEC ETCs.⁵ Thus imposing a cap on the high cost support received by CETCs would not violate the principle of competitive neutrality.

Claims of discrimination and assertions that the CETC cap would not be competitively and technologically neutral are wrong. Funding under the proposed interim cap would still be available for CETCs (as it is to ILECs) to fulfill the Act's Universal Service requirements. The proposed cap on CETC funding is, regardless of the spurious claims of certain commenters in this proceeding, competitively and technologically neutral. The special privilege now enjoyed by the CETCs should be eliminated and the Commission should impose the cap on CETC funding as recommended by the Joint Board.

Additionally, the differences the Joint Board discusses in ILEC requirements (e.g. provide equal access, adhere to significant rate regulation, serve as the COLR, prove up a need for support based on costs) versus CETC requirements (e.g. no requirement for equal access, no requirement to serve as the COLR, minimal regulatory requirements and no requirement to prove up a need for support) are real and increase the costs of the ILECs versus the CETCs. These facts demonstrate that the wireless carriers are not on the

⁵ *Id.*

same competitive footing as the wireline carriers as the additional ILEC requirements establish the basis for the unwarranted support received (without any needs based test) by the CETCs under the equal per-line support rule. The CLEC's unwarranted support based on the equal per-line support rule when applied to multiple handsets per wireless customer bill is a major reason for the explosive CETC support growth.

As a consequence, the Joint Board's analysis of the differences between CETCs and ILECs and the lack of competitive neutrality they demonstrate, do justify immediate imposition of the CETC federal support funding cap, while the Joint Board and Commission revamp the Universal Service system.

III. CONCLUSION

The Joint Board in its Recommended Decision presented a cogent, accurate and well-reasoned discussion of why the cap on CETC federal support is necessary. However, because the cap would reign in the unbridled growth of its support that is threatening the viability of the entire support system, certain CETCs or their Associations commenting in this proceeding attempt a tried and true tactic – misdirection.

In spite of the explosive growth of CETC support funding, they argue that either the Joint Board focused on the wrong problem or that there is no problem at all. These assertions by CETCs or their Associations are misleading and simply an attempt to misdirect the Commission, and provide

no factual basis for the Commission not to impose the cap on CETC support recommended by the Joint Board.

Commentors hope that the imposition of the cap on CETC support will give the CETCs and the Associations that represent them, the incentive that the ILECs already have as a result of the cap on their support, to resolve collectively the very real threat to the long-term viability of Universal Service.

Respectfully submitted,

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